

1  
2 AN ORDINANCE AUTHORIZING THE EXECUTION AND  
3 DELIVERY OF A COMBINED FIRST AMENDMENT TO LOAN  
4 AGREEMENT, TRUST INDENTURE, PROMISSORY NOTE AND  
5 MORTGAGE IN CONNECTION WITH THE REFINANCING OF THE  
6 ECONOMIC DEVELOPMENT REVENUE BONDS (THE 110  
7 GENERAL PARTNERSHIP PROJECT), SERIES 1984A, OF THE  
8 CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH  
9 WERE LOANED TO THE 110 GENERAL PARTNERSHIP TO  
FINANCE THE ACQUISITION, CONSTRUCTION AND  
INSTALLATION OF COMMERCIAL FACILITIES LOCATED  
WITHIN THE CITY OF FORT WAYNE, INDIANA; AND  
AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE  
ISSUANCE OF SUCH BONDS; AND DECLARING AN  
EMERGENCY.

10 WHEREAS, the City of Fort Wayne, Indiana (the  
11 "Issuer"), a municipal corporation organized and existing  
12 under the constitution and laws of the State of Indiana,  
13 by virtue of the laws of the State of Indiana, including  
14 Indiana Code, Title 18, Article 6, Chapter 4.5 as  
15 recodified and amended at I.C. 36-7-12, is authorized and  
16 empowered, among other things, (a) to make loans to  
17 assist in the financing and refinancing of the  
acquisition, construction and installation of an economic  
development facility, located within the boundaries of  
the Issuer, (b) to issue and sell its revenue bonds to  
provide moneys for such loans and, (c) to enact this  
Ordinance and to execute and deliver the agreements and  
instruments hereinafter identified; and

18 WHEREAS, this Common Council heretofore determined that  
19 the issuance of the Issuer's \$1,700,000 Economic  
20 Development Revenue Bonds (The 110 General Partnership  
21 Project), Series 1984A (the "Series 1984A Bonds"), would  
22 promote the welfare of the people of the Issuer, create  
23 or preserve jobs and employment opportunities, assist in  
24 the development of economic, commercial and industrial  
25 activities to the benefit of the people of the Issuer,  
26 and that the Issuer, by assisting with the financing of  
the acquisition, construction and installation of certain  
office buildings constituting commercial facilities,  
located within the boundaries of the Issuer, through the  
issuance of the Series 1984A Bonds, would be acting in  
the manner consistent with and in furtherance of a public  
purpose and the provisions of Indiana Code, Title 18,  
Article 6, Chapter 4.5 as recodified and amended at I.C.  
36-7-12 (the "Act"); and

27 WHEREAS, this Common Council has determined to  
28 refinance the Series 1984A Bonds in order to provide for  
29 a lower interest rate to be payable on the Series 1984A  
30 Bonds and thereby effect cost savings and promote the  
31 welfare of the people of the Issuer, create or preserve  
jobs and employment opportunities, and assist in the  
development of economic, commercial and industrial  
activities to the benefit of the people of the Issuer;

32 WHEREAS, in connection with the refinancing of the  
Series 1984A Bonds it is necessary to provide for certain  
amendments to the Trust Indenture dated as of April 1,  
1984 (the "Indenture") between the Issuer and NBD Bank,  
N.A. (successor trustee to Summit Bank), as Trustee (the  
"Trustee"), the Loan Agreement dated as of April 1, 1984,  
between the Issuer and The 110 General Partnership (the  
"Borrower"), and the Promissory Note dated April 4, 1984  
(the "Note") of the Borrower to the Issuer and assigned



1 to the Trustee and the Mortgage and Security Agreement  
dated as of April 1, 1984, between the Borrower and the  
Trustee (the "Mortgage"); and

2 WHEREAS, in connection with such refinancing, it is  
3 also necessary to amend Ordinance No. 5-28-84 passed and  
4 adopted by this Common Council on March 27, 1984 (the  
"Authorizing Ordinance") and to authorize other action in  
connection therewith; and

5 WHEREAS, the subject matter of this Ordinance  
6 constitutes an emergency measure necessary for the  
7 immediate preservation of the public peace, health,  
8 safety and welfare of the Issuer, and for the further  
9 reason that this Ordinance must take effect at the  
10 earliest possible date in order to take advantage of  
current interest rates thereby lowering financing costs  
and to maintain and create jobs and advance and promote  
commercial and economic development within the boundaries  
of the Issuer;

11 NOW THEREFORE, BE IT ORDAINED by the Common Council of  
12 the City of Fort Wayne, Indiana, as follows:

13 Section 1. Definitions. All defined terms used herein  
14 and those not otherwise defined herein shall have the  
respective meanings given to them in the Indenture.

15 Section 2. Authorization of Amendment Agreement and  
16 All Other Documents to be Executed by the Issuer. The  
17 Executive and Clerk of the Issuing Authority are  
18 authorized and directed to execute, acknowledge and  
19 deliver in the name and on behalf of the Issuer, the  
20 Combined First Amendment to Loan Agreement, Trust  
21 Indenture and Promissory Note and Mortgage dated its date  
22 of execution and delivery (the "Amendment Agreement"),  
23 among the Issuer, the Borrower, the Trustee, the Bank and  
24 the holder of all of the outstanding Series 1984A Bonds,  
25 in substantially the form submitted to the Issuer, which  
is hereby approved with such changes therein not  
inconsistent with this Ordinance and not substantially  
adverse to the Issuer as may be permitted by the Act and  
approved by the officers executing the same on behalf of  
the Issuer. The approval of such changes by said  
officers, and that any such changes are not substantially  
adverse to the Issuer, shall be conclusively evidenced by  
the execution of the Amendment Agreement by such  
officers.

26 The Executive and Clerk of the Issuing Authority are  
27 each hereby separately authorized to take any and all  
28 actions and to execute such financing statements,  
29 assignments, certificates and other instruments that may  
30 be necessary or appropriate in the opinion of Peck,  
31 Shaffer & Williams, as Bond Counsel, in order to effect  
the refinancing of the Series 1984A Bonds and the intent  
of this Ordinance including, without limitation, any  
documents necessary to maintain the exclusion from gross  
income for federal income tax purposes of interest on the  
Series 1984A Bonds.

32 Section 3. Interest Rate. From and after the date of  
execution of and delivery of the Amendment Agreement, the  
Series 1984A Bonds shall bear the interest rate set forth  
in the Amendment Agreement, not to exceed seven and  
thirty-five hundredths percent (7.35%) per annum.

Section 4. No Personal Liability. No recourse under  
or upon any obligation, covenant, acceptance or agreement  
contained in this Ordinance, or in any Series 1984A Bond,



1 or in the Amendment Agreement, or under any judgment  
2 obtained against the Issuer, or by the enforcement of any  
3 assessment, or by any legal or equitable proceeding by  
4 virtue of any constitution or statute or otherwise, or  
5 under any circumstances, shall be had against any member,  
6 officer, agent or employee, as such, past, present, or  
7 future, of the Issuer, either directly or through the  
8 Issuer, or otherwise, for the payment for or to the  
9 Issuer or any receiver thereof, or for or to any holder  
10 of any Series 1984A Bond, or otherwise, of any sum that  
11 may be due and unpaid by the Issuer upon any of the  
12 Series 1984A Bonds. Any and all personal liability of  
every nature, whether at common law or in equity, or by  
statute or by constitution or otherwise, of any such  
member, officer, agent or employee, as such, to respond  
by reason of any act or omission on his or her part, or  
otherwise, for, directly or indirectly, the payment for  
or to the Issuer or any receiver thereof, or for or to  
the owner or any holder of any Series 1984A Bond, or  
otherwise, of any sum that may remain due and unpaid upon  
any Series 1984A Bond, shall be deemed to be expressly  
waived and released as a condition of and consideration  
for the execution and delivery of the Amendment Agreement  
and the refinancing of the Series 1984A Bonds.

13 Section 5. Security Pledged for Series 1984A Bonds.  
The Series 1984A Bonds are special obligations of the  
14 Issuer and shall be equally and ratably payable solely  
15 from the Bond Fund and Pledged Receipts and secured by a  
16 pledge of and lien on such Pledged Receipts and the Bond  
17 Fund. The Series 1984A Bonds shall be further secured by  
18 the Indenture, the Mortgage, the Assignment of Rents and  
19 Lease and the Guaranty; and anything in this Ordinance,  
20 the Authorizing Ordinance, the Indenture, the Amendment  
21 Agreement or the Series 1984A Bonds to the contrary  
22 notwithstanding, neither this Ordinance, the Authorizing  
23 Ordinance, the Indenture, the Amendment Agreement, the  
24 Series 1984A Bonds, nor any other instrument delivered in  
25 connection therewith shall represent or constitute a  
26 general debt or a pledge of the faith and credit or  
taxing power of the Issuer or of the Issuer. The Series  
1984A Bonds are not in any respect a general obligation  
of the Issuer, nor are they payable in any manner from  
revenues raised by taxation, and the Series 1984A Bonds  
shall contain on the face thereof a statement to that  
effect. Nothing herein shall be deemed to prohibit the  
Issuer, of its own volition, from using, to the extent it  
may be lawfully authorized to do so, any other resources  
or revenues for the fulfillment of any of the terms,  
conditions or obligations of the Indenture, the Amendment  
Agreement, this Ordinance, the Authorizing Ordinance or  
any of the Series 1984A Bonds.

27 Section 6. Severability. If any section, paragraph or  
28 provision of this Ordinance shall be held to be invalid  
29 or unenforceable for any reason, the invalidity or  
unenforceability of such section, paragraph or provision  
shall not affect any of the remaining provisions of this  
Ordinance.

30 Section 7. Repeal of Conflicting Ordinances. All  
31 ordinances and orders, or parts thereof, in conflict with  
32 the provisions of this Ordinance are, to the extent of  
such conflict, hereby repealed.

Section 8. Compliance With Open Door Law. It is  
hereby determined that all formal actions of this Common  
Council relating to the adoption of this Ordinance were  
taken in an open meeting of this Common Council, that all  
deliberations of this Common Council and of its



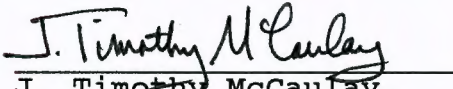
committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including the Indiana Open Door Law.

Section 9. Emergency. This Ordinance is hereby declared to be an emergency measure and is necessary for the immediate preservation of the public peace, health, safety and welfare of the Issuer and for the further reason that this Ordinance must take effect at the earliest possible date in order to proceed promptly with the refinancing of the Series 1984A Bonds and effect the cost savings therefrom in order to maintain and create jobs and advance and promote commercial and economic development in the boundaries of the Issuer.

Section 10. Effective Date. This Ordinance shall take effect and be in force immediately upon its passage and approval as provided by law.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
J. Timothy McCaulay,  
City Attorney

CERTIFICATE

The undersigned, City Clerk of the City of Fort Wayne, Indiana, hereby certifies that the foregoing is a true and complete copy of Ordinance No. D-77-94 of the Common Council with respect to the refinancing of the outstanding City of Fort Wayne, Indiana Economic Development Revenue Bonds (The 110 General Partnership Project), Series 1984A adopted on the 11th day of October, 1994, and has not been amended or rescinded as of this date.

Dated: 10-11, 1994

Daniel E. Kennedy  
City Clerk, by Daniel E. Kennedy, Deputy  
City of Fort Wayne, Indiana Clerk



Read the first time in full and on motion by Belmont, seconded by Belmont, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 9-27-94

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Belmont, seconded by Belmont, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>			<u>3</u>
BRADBURY	<u>✓</u>			
EDMONDS				<u>✓</u>
GIAQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY				<u>✓</u>
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 10-11-94

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
Natasha E. Eschert, Deputy Clerk

Passed and adopted by the Common Council of the City of Fort Wayne,

Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. A-77-94  
on the 11th day of October, 1994.

ATTEST:

(SEAL)

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
Natasha E. Eschert, Deputy Clerk

Thomas E. Henry  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of October, 1994, at the hour of 11:30 o'clock A, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK  
Natasha E. Eschert, Deputy Clerk

Approved and signed by me this 14th day of October, 1994, at the hour of 5:00 o'clock P, M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR



**COMBINED FIRST AMENDMENT TO  
LOAN AGREEMENT, TRUST INDENTURE,  
PROMISSORY NOTE AND MORTGAGE**

This Combined First Amendment to Loan Agreement, Trust Indenture, Promissory Note and Mortgage (the "Amendment Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_, 1994, among The 110 General Partnership, an Indiana general partnership (the "Borrower"), the City of Fort Wayne, Indiana, an Indiana political subdivision (the "Issuer"), NBD Bank, N.A. (successor trustee to Summit Bank), a national banking association located in, and duly authorized to exercise corporate trust power under the laws of, the State of Indiana, as trustee (the "Trustee"), The Cincinnati Insurance Company, an Ohio corporation and holder of all of the outstanding Series 1984A Bonds (the "Bondholder"), and NBD Bank, N.A. (successor letter of credit provider to Summit Bank), as provider of an irrevocable letter of credit securing the payment of principal and interest on the Series 1984A Bonds (the "Bank"), under the following circumstances:

A. The Borrower entered into a Loan Agreement dated as of April 1, 1984 (the "Loan Agreement") with the Issuer, pursuant to the terms of which the Issuer loaned to the Borrower the aggregate principal amount of \$1,700,000, and Borrower delivered its Promissory Note dated April 4, 1984 (the "Note") to the Issuer, which assigned it to the Trustee, to evidence said loan.

B. To finance costs of the Project, as defined in the Loan Agreement, the Issuer issued its Economic Development Revenue Bonds (The 110 General Partnership Project), Series 1984A, in the aggregate principal amount of \$1,700,000 (the "Series 1984A Bonds"); such Series 1984A Bonds being issued pursuant to the Trust Indenture dated as of April 1, 1984 (the "Trust Indenture") between the Issuer and the Trustee and under the Bond Legislation (as defined in the Loan Agreement).

C. The amounts payable by the Borrower pursuant to the Note are equal to the amounts payable by the Issuer as principal, premium (if any) and interest on the Series 1984A Bonds.

D. The Series 1984A Bonds are secured by a Mortgage and Security Agreement between the Borrower and the Trustee dated as of April 1, 1984 (the "Mortgage") and by an irrevocable letter of credit issued by the Bank to the Trustee dated as of April 1, 1984 (the "Letter of Credit").

E. In connection with the refinancing of the Series 1984A Bonds, the parties hereto desire to make certain amendments to the Loan Agreement, the Trust Indenture, the Note and the Mortgage, to provide that the rate of interest on the Series 1984A Bonds and on the Note, commencing the day and year first above written, shall be \_\_\_\_\_ percent (\_\_\_\_%) per annum, and to terminate the Letter of Credit and all documents relating thereto, including the Reimbursement Agreement between the Borrower and the Bank dated as of April 1, 1984 (the "Reimbursement Agreement") and the Mortgage and

Security Agreement between the Borrower and the Bank dated as of April 1, 1984 (the "Second Mortgage").

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Borrower, the Issuer, the Trustee, the Bondholder and the Bank agree as follows:

SECTION 1. By their execution of this Amendment Agreement, each party hereto irrevocably and expressly consents, and each purchaser of a Series 1984A Bond following the execution and delivery of this Amendment Agreement irrevocably and expressly consents, to the provisions of this Amendment Agreement, which consents shall be binding on all future holders of the Series 1984A Bonds.

SECTION 2. The form of Series 1984A Bond as set forth in the Preambles to the Trust Indenture is hereby amended and restated in its entirety to read as set forth in the attached Exhibit A.

SECTION 3. The Trust Indenture is hereby amended by deleting the first sentence of the second paragraph of Section 4 of the Bond Legislation as set forth in the preambles of the Trust Indenture in its entirety and substituting in lieu thereof the following:

The Bonds shall bear interest from their respective dates and until and including the date of execution and delivery of the Amendment Agreement, at a fixed rate of ten and one-half percent (10-1/2%) per annum, and thereafter shall bear interest at a fixed rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum.

SECTION 4. The Trust Indenture is hereby amended by inserting to Article I the following definition:

"Amendment Agreement" means the Combined First Amendment to Loan Agreement, Trust Indenture and Promissory Note dated \_\_\_\_\_, 1994 among the Borrower, the Issuer, the Trustee, The Cincinnati Insurance Company and NBD Bank, N.A.

SECTION 5. The Trust Indenture is hereby amended by deleting therefrom any reference to the Bank, the Reimbursement Agreement, the Letter of Credit and the Second Mortgage, and by deleting any requirement of approval, request or consent of, or notice to the Bank, whether in writing or otherwise.

SECTION 6. The Trust Indenture is hereby amended by deleting Sections 4.11, 4.12, 6.01(e), 6.06(d), 6.11, 6.12 and 6.14 thereof in their entirety.



SECTION 7. The Trust Indenture is hereby amended by deleting from Section 5.06 thereof the following phrases: ",the Bank," and "and to the Original Purchaser of the bonds then outstanding" and by inserting "and" after the word "Issuer".

SECTION 8. The Trust Indenture is hereby amended by deleting Section 6.02 thereof in its entirety and substituting in lieu thereof the following:

SECTION 6.02. Acceleration. Upon the occurrence of any event of default as defined in Section 6.01 hereof, the Trustee may, and upon the written request of the holders of not less than twenty-five percent in aggregate principal amount of Bonds then outstanding shall, except if prohibited by law, (a) by notice in writing delivered to the Issuer and the Borrower, declare the principal of all Bonds then outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable and (b) on behalf of the Issuer declare all Note Payments to be immediately due and payable pursuant to Section 7.2(a) of the Agreement.

SECTION 9. The Trust Indenture is hereby amended by deleting the second and third paragraphs of Section 6.13 thereof in their entirety.

SECTION 10. The Note is hereby amended by deleting the second sentence of the third paragraph thereof in its entirety and substituting in lieu thereof the following:

This Note shall bear interest (calculated on the outstanding principal amount of the Series 1984A Bonds from time to time) until and including the date of execution and delivery of the Amendment Agreement, at the fixed rate of ten and one-half percent (10-1/2%) per annum, and thereafter shall bear interest at the fixed rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum, payable in immediately available funds on each monthly interest payment date hereon, commencing the last business day preceding May 1, 1984, and continuing until the entire principal sum hereof is paid or provided for.

SECTION 11. The Loan Agreement is hereby amended by deleting therefrom any reference to the Bank, the Reimbursement Agreement, the Letter of Credit and the Second Mortgage, and by deleting any requirement of approval, request or consent of, or notice to, the Bank, whether in writing or otherwise.

SECTION 12. The Loan Agreement is hereby amended by deleting from the first sentence of Section 5.12 thereof the following phrase: "and to the Original Purchaser".

SECTION 13. The Loan Agreement is hereby amended by deleting Section 5.13 thereof in its entirety.



SECTION 14. The Loan Agreement is hereby amended by deleting the third paragraph of Section 6.02 thereof in its entirety.

SECTION 15. The Loan Agreement is hereby amended by deleting the second sentence of the third paragraph of Exhibit C thereof in its entirety and substituting in lieu thereof the following sentence:

This Note shall bear interest (calculated on the outstanding principal amount of the Series 1984A Bonds from time to time) until and including the date of execution and delivery of the Amendment Agreement, at the fixed rate of ten and one-half percent (10-1/2%) per annum, and thereafter shall bear interest at the fixed rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum, payable in immediately available funds on each monthly interest payment date hereon, commencing the last business day preceding May 1, 1984, and continuing until the entire principal sum hereof is paid or provided for.

SECTION 16. The Mortgage is hereby amended by deleting therefrom any reference to the Bank, the Reimbursement Agreement, the letter of Credit and the Second Mortgage, and by deleting any requirement of approval, request or consent of, or notice to the Bank, whether in writing or otherwise.

SECTION 17. The Mortgage is hereby amended by deleting the first sentence of Section 4.4 thereof in its entirety and substituting in lieu thereof the following:

Except for (a) Permitted Encumbrances, (b) purchase money security interests in personal property other than personal property acquired with the proceeds of the Bonds, or (c) other encumbrances consented to in writing by the Bondholders, Grantor shall not create or cause or permit to exist any lien or security interest in the Mortgaged Property, including any fixtures, machinery, equipment or other items of personal property which are intended to be or become part of the Mortgaged Property.

SECTION 18. The notice address for the Trustee under the Trust Indenture and the Loan Agreement is hereby amended to read as follows:

As to the Trustee:

NBD Bank, N.A.  
P.O. Box 2345  
1 Summit Square  
Fort Wayne, IN 46801-2345

SECTION 19. By executing this Amendment Agreement, each party hereto waives any notice of the amendment of the Loan Agreement, the Note, the Mortgage or the Trust Indenture required to be given by any of those documents.



SECTION 20. From and after the time of taking effect of this Amendment Agreement, the Loan Agreement, the Trust Indenture, the Note and the Mortgage will be, and be deemed to be, modified and amended in accordance herewith, and the respective rights, duties and obligations under the Loan Agreement, Trust Indenture, Note and the Mortgage of the parties thereto shall be determined, exercised and enforced thereunder subject in all respects to the provisions of this Amendment Agreement, and all provisions hereof shall be deemed to be part of the terms and conditions of the Loan Agreement, Trust Indenture, Note and the Mortgage for any and all purposes.

SECTION 21. This Amendment Agreement may be executed in multiple counterparts each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

SECTION 22. This Amendment Agreement is adopted with the intent that the laws of the State of Indiana shall govern its construction.



IN WITNESS WHEREOF, the parties have executed this Amendment Agreement as of the day and year first above written.

Signed and Acknowledged  
in the Presence of:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Printed Name:

Signed and Acknowledged  
in the Presence of:  
(as to both)

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Printed Name:

Signed and Acknowledged  
in the Presence of:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Printed Name:

Borrower  
**THE 110 GENERAL PARTNERSHIP**

By \_\_\_\_\_  
Title:

Issuer  
**CITY OF FORT WAYNE, INDIANA**

By \_\_\_\_\_

By \_\_\_\_\_

Trustee  
**NBD BANK, N.A.**

By \_\_\_\_\_  
Title:

Attest:

By \_\_\_\_\_  
Title:



**ACKNOWLEDGMENTS**

STATE OF INDIANA

COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_ day of October, 1994 before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ of The 110 General Partnership, an Indiana general partnership, and to me known to be the person who executed the foregoing instrument, and acknowledged to me the execution thereof to be his free act and deed and the free act and deed of said limited partnership for the uses and purposes therein mentioned, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said general partnership as such officer; that the same is his free act and deed as such officer, and the free act and deed of said general partnership; and that he was duly authorized thereunto by its partners.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

(SEAL)



STATE OF INDIANA

COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 1994, before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the City of Fort Wayne, Indiana, the above-described municipal corporation and to me known to be the persons who executed the foregoing instrument, and acknowledged to me the execution thereof to be their free act and deed and the free act and deed of said municipal corporation for the uses and purposes therein mentioned, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said municipal corporation as such officers; that the same is their free act and deed as such officers, and the free act and deed of said municipal corporation; and that they were duly authorized thereunto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

(SEAL)



STATE OF INDIANA

COUNTY OF \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, 1994, before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of NBD Bank, N.A., as trustee, the above-described national banking association and to me known to be the persons who executed the foregoing instrument, and acknowledged to me the execution thereof to be their free act and deed and the free act and deed of said association for the uses and purposes therein mentioned, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said association as such officers; that the same is their free act and deed as such officers, and the free act and deed of said association; and that they were duly authorized thereunto by its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

STATE OF INDIANA

COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 1994, before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of NBD Bank, N.A., as letter of credit bank, the above-described national banking association and to me known to be the persons who executed the foregoing instrument, and acknowledged to me the execution thereof to be their free act and deed and the free act and deed of said association for the uses and purposes therein mentioned, and acknowledged to me that they did so sign said instrument in the name and upon behalf of said association as such officers; that the same is their free act and deed as such officers, and the free act and deed of said association; and that they were duly authorized thereunto by its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

(SEAL)



STATE OF OHIO

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 1994, before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ of The Cincinnati Insurance Company, an Ohio corporation and to me known to be the person who executed the foregoing instrument, and acknowledged to me the execution thereof to be his free act and deed and the free act and deed of said corporation for the uses and purposes therein mentioned, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his free act and deed as such officer, and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

## EXHIBIT A

### [FORM OF FULLY REGISTERED BOND]

NUMBER

R-\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF INDIANA  
CITY OF FORT WAYNE

ECONOMIC DEVELOPMENT REVENUE BOND  
(THE 110 GENERAL PARTNERSHIP PROJECT)  
SERIES 1984A

The City of Fort Wayne, Indiana, an Indiana political subdivision (the "Issuer"), for value received, promises to pay \_\_\_\_\_, or registered assigns, but solely from the sources and in the manner hereinafter set forth, the principal sum of

\_\_\_\_\_ THOUSAND DOLLARS (\$\_\_\_\_\_)

as hereinafter set forth, and to pay from such sources interest thereon from the date hereof at a fixed rate of ten and one-half percent (10-1/2%) per annum until \_\_\_\_\_, 1994, and thereafter at a fixed rate of \_\_\_\_\_ percent per annum (\_\_\_\_\_%), payable semiannually on April 1 and October 1 of each year until the principal sum of this Bond has been paid, commencing October 1, 1984. Interest hereon shall be calculated on a 360 day per year basis. Principal, interest and any redemption premium hereon are payable in lawful money of the United States of America, without deduction for the services of the paying agent. Principal is payable upon presentation and surrender of this Bond at the corporate trust office of the Trustee, presently NBD Bank, N.A., Fort Wayne, Indiana, successor trustee to Summit Bank. Interest on this Bond shall be paid by check or draft mailed to the registered holder at such holder's address as it appears on the registration books maintained by the Trustee.

This Bond is one of a duly authorized issue of Economic Development Revenue Bonds (The 110 General Partnership Project) Series 1984A (the "Bonds"), issuable under the Trust Indenture, dated as of April 1, 1984 (hereinafter, as the same may be amended or supplemented in accordance with its terms, referred to as the "Indenture"), between the Issuer and NBD Bank, N.A., as Trustee (the term "Trustee", as used herein, refers to such Trustee or any successor Trustee appointed pursuant to the Indenture), originally issued in the aggregate principal amount of \$1,700,000 and issued for the purpose of financing costs of acquiring, constructing and installing commercial facilities, including costs incidental thereto and of the financing thereof (the "Project"), such Project being the subject of a Loan Agreement between the Issuer and The 110 General Partnership (the "Borrower"), dated as of April 1, 1984 (hereinafter, as the same



may be amended or supplemented in accordance with its terms referred to as the "Agreement"), in order to promote the economic welfare of the people of the State of Indiana by creating jobs and employment opportunities.

Concurrently with the execution and delivery of the Agreement, the Borrower has executed and delivered to the Issuer the Borrower's Promissory Note (Series 1984A) in the principal amount of \$1,700,000, in the form attached as Exhibit C to the Agreement (the "Note" or "Series 1984A Note").

The Bonds are issued under and are to be equally and ratably secured and entitled to the protection given by the Indenture, which is on file in the office of the Trustee, and reference is hereby made to the Indenture and the Agreement and to all indentures and agreements, respectively, supplemental thereto for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security and of the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured to all of the provisions of which Indenture, each holder, by the acceptance hereof, assents.

Pursuant to a Mortgage and Security Agreement dated as of April 1, 1984 (the "Mortgage"), as security for the payment of the principal of and interest on the Note and the Bonds, the Borrower has mortgaged and granted a security interest in the Project to the Trustee and the Borrower has executed a conditional assignment of rents and leases (the "Assignment of Rents and Leases") in favor of the Trustee. Nicholas V. Litchin, Tina Litchin, Joseph Christoff, Virginia L. Christoff, Thomas A. Irmscher, Linda G. Irmscher, Stephen P. Irmscher, Cheryl T. Irmscher, Jay Habig and Sandra D. Habig have entered into a Guaranty Agreement with the Trustee (the "Guaranty Agreement") dated as of April 1, 1984 guaranteeing the payment of principal and interest and any redemption premium on the bonds. Copies of the Mortgage, Assignment of Rents and Leases and Guaranty Agreement are on file with the Trustee.

The Bonds are issued pursuant to the Indiana Code, Title 18, Article 6, Chapter 4.5, as recodified and amended at I.C. 36-7-12 and the authorities therein mentioned and an ordinance duly adopted by the Common Council of the Issuer, as the same may be amended from time to time (the "Bond Legislation"). The Bonds are special obligations of the Issuer. Payment of the principal of and premium, if any, and interest on the Bonds (hereinafter collectively referred to as "Bond Service Charges") is to be made, except to the extent made from Bond proceeds and the investment thereof, solely from the "Pledged Receipts" as defined in the Indenture (generally, the amounts which under the Agreement and the Note, are payable by the Borrower directly to the Trustee; all other moneys received by the Issuer, or by the Trustee for the account of the Issuer, in respect of the Agreement or the Project, except certain expense, reimbursement and indemnity payments which are to be made by the Borrower directly to the Issuer, and subject to certain provisions in the Indenture with respect to the Trustee holding moneys for the benefit of the holders of particular Bonds; and the income and profit from the investment of such payments and moneys), and is secured by a pledge of and lien on the moneys

deposited in the Bond Fund and the Construction Fund as established by the Indenture, and a pledge and assignment of other moneys constituting such Pledged Receipts, as provided for in the Indenture. NEITHER THE BONDS, THE BOND LEGISLATION, THE INDENTURE, THE AGREEMENT, NOR THE MORTGAGE REPRESENTS OR CONSTITUTES A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER. THE BONDS ARE NOT IN ANY RESPECT A GENERAL OBLIGATION OF THE ISSUER, NOR ARE THEY PAYABLE IN ANY MANNER FROM REVENUES RAISED BY TAXATION. Payments sufficient for the prompt payment when due of the Bond Service Charges on the Bonds are required by the Agreement and the Note to be made by the Borrower to the Trustee. Any such amounts received by the Trustee are to be deposited in a special fund created by the Issuer designated "City of Fort Wayne, Indiana - The 110 General Partnership Bond Fund, Series 1984A", and have been duly pledged for that purpose.

The Bonds are issuable as fully registered bonds in denominations of \$5,000 and any integral multiple thereof.

This Bond is transferable by the registered holder hereof in person or by his attorney duly authorized in writing at the corporate trust office of the Trustee as Bond Registrar, upon presentation hereof to the Trustee, all subject to the terms and conditions provided in the Indenture.

Principal on the Bonds shall be payable annually on April 1 of each year commencing 1985, in the following aggregate amounts:

<u>Principal Payment Dates (Inclusive)</u>	<u>Amount</u>
April 1, 1985 - April 1, 2004	\$85,000

The principal payable on any outstanding Bond in accordance with the foregoing paragraph shall be an amount which bears the same ratio to the aggregate amount of principal payable on all outstanding Bonds as the outstanding principal amount of such Bond bears to the aggregate outstanding principal amount of all Bonds.

The Bonds are subject to optional redemption prior to maturity, in whole or in part, on April 1, 1994, or on any Interest Payment Date thereafter, in the event of prepayment of the Note in full or in part by the Borrower as provided by the first paragraph of Section 6.1 of the Agreement. The redemption date in any such event shall be the date set by the Borrower for prepayment of the Note in accordance with the provisions of such paragraph. The redemption price in any such event shall be equal to the following percentages of the principal amount redeemed, plus in each case accrued interest to the date fixed for redemption:



<u>Redemption Date</u>	<u>Optional Redemption Price</u>
April 1, 1994 or October 1, 1994	105-1/2 %
April 1, 1995 or October 1, 1995	104-1/1 %
April 1, 1996 or October 1, 1996	103-1/2 %
April 1, 1997 or October 1, 1997	102-1/2 %
April 1, 1998 or October 1, 1998	101-1/2 %
April 1, 1999 or October 1, 1999	100-1/2 %
April 1, 2000 and thereafter	100 %

The Bonds are also subject to optional redemption in whole in the event of the exercise by the Borrower of its option to prepay the Note in full as provided by the fourth paragraph of Section 6.1 of the Agreement, at a redemption price of 100% of the principal balance of the Bonds outstanding on the date of redemption, plus accrued interest to the redemption date.

The Bonds shall also be callable for redemption in whole or in part, upon occurrence of any of the circumstances which operate to require prepayment of the Note in full or in part by the Borrower in accordance with the provisions of the first and third paragraphs of Section 6.2 of the Agreement. The redemption date in any of such events shall be the date set by the Borrower, (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Agreement. The redemption price in any Of such events shall be 100% of the principal amount of the bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of Bonds due to a Determination of Taxability (as defined in the Indenture), the redemption price shall be increased by an amount equal to the difference between (a)(i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability (as defined in the indenture), had been the Taxable Rate of Interest (as defined in the Indenture), plus (ii) any penalties and interest payable by the Bondholders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Bondholders in contesting or resisting the loss of the taxexempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

When less than the entire unmatured portion of the Bonds shall be called for redemption at any time or from time to time, the Bonds or portions of fully registered Bonds to be redeemed shall be selected by lot by the Trustee in such manner as the Trustee may determine.

Rights of redemption of the Bonds shall be exercised by notice, specifying the Bonds to be called, the redemption price to be paid, the date fixed for redemption and the places where the amounts due upon such redemption are payable, which notice, subject to the provisions of the Indenture therefor, shall be given by registered or certified mail at least thirty days prior to the date fixed for redemption to the holder or holders thereof at the address shown on the

registration books kept by the Trustee. Reference is made to the Indenture for provisions as to failure to give, or any defect in, such mailed notice. If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption thereof, together with interest thereon to the redemption date, shall be held by the Trustee or any paying agent so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and such Bonds and portions of fully registered Bonds shall no longer be protected by, and shall not be deemed to be outstanding under, the Indenture.

Except as provided in the Indenture, the holders or registered owners of the Bonds are not entitled to enforce the provisions of the Indenture or to institute, appear in or defend any suit, action or proceeding to enforce any provisions of the Indenture or to take any actions with respect to any event of default under the Indenture.

If any Bond Service Charges are not paid when due, the issuer shall also pay to the Trustee for distribution to the Bondholders, a "late charge" equal to 4% of such Bond Service Charges to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration of the Bonds, the amounts payable upon such acceleration, together with interest thereon at the Interest Rate for Advances (as defined in the Indenture) from the date of acceleration, shall continue as an obligation of the Issuer until paid. Moneys received by the Trustee as "late charges" and interest at the Interest Rate for Advances shall be paid by the Trustee to the persons holding or formerly holding Bonds which were not paid principal, premium and/or interest at the time required herein. The fact and period of holding any Bond shall be determined as provided in Section 9.01 of the Indenture.

In addition to the provisions contained in the indenture authorizing the Issuer and the Trustee, without the consent of or notice to any of the Bondholders, to enter into supplemental indentures not inconsistent with the Indenture and for certain purposes specified therein, the Indenture contains provisions permitting such parties, with the consent of the holders of not less than 66-2/3% in aggregate principal amount of the Bonds at the time outstanding, to execute supplemental indentures for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions of the Indenture or any indenture supplemental thereto; provided, however, that no such supplemental indenture shall (a) without the consent of the holder of each Bond so affected, extend the maturity of the principal of or the interest on any Bond, or reduce the principal amount of any Bond or the rate of interest or redemption premium thereon, or reduce the amount or extend the time of payment of any amortization or mandatory sinking fund requirements, or (b) without the consent of the holders of all Bonds then outstanding, permit a privilege or priority of any Bond or Bonds over any other Bond or Bonds or reduce the aggregate principal amount of the Bonds required for consent to such supplemental indenture.

If an event of default, as defined in the Indenture, shall occur, the principal of Bonds then outstanding may be declared due and payable in the manner and with the effect provided



by the Indenture, but subject to waiver of such event of default or rescission of such declaration as provided in the Indenture.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members of the Common Council or the officers of the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the Issuer in accordance with their terms, and precedent to and in the execution and delivery of the Indenture and Agreement, have been done and performed and have happened in regular and due form as required by law; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Clerk and the facsimile seal of the Issuer to be reproduced hereon, all as of the 1st day of April, 1984.

CITY OF FORT WAYNE, INDIANA.

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

[SEAL]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described  
in the within-mentioned Indenture

NBD BANK, N.A., Trustee

By: \_\_\_\_\_  
Authorized Signature

Dated: \_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please print or type write name and address of transferee) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_

In the presence of: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.





# The City of Fort Wayne

Paul Helmke, Mayor

September 23, 1994

To the Members of Common Council:

Enclosed please find Bill No. S-94-09- . This is an Ordinance to authorize the issuance of refunding (refinancing) Revenue bonds for The 110 General Partnership to allow them to lock in a long term favorable interest rate on their financing at a time of increasing interest rates.

The ordinance approves the financing and authorizes the execution of the necessary documents. This bond issue is a limited obligation issue and does not impact the tax rate or the city's bonding capacity.

A failure to pass the ordinance would cause the borrower to face increasing interest expenses.

Very truly yours,

CITY OF FORT WAYNE ECONOMIC  
DEVELOPMENT COMMISSION

R. David Boyer,  
Associate City Attorney

RDB:alc  
Enclosure

*S-94-09-21*

## DIGEST SHEET

**TITLE OF ORDINANCE:** AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A COMBINED FIRST AMENDMENT TO LOAN AGREEMENT, TRUST INDENTURE, PROMISSORY NOTE AND MORTGAGE IN CONNECTION WITH THE REFINANCING OF THE ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS (THE 110 GENERAL PARTNERSHIP PROJECT) SERIES 1984A, OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH WERE LOANED TO THE 110 GENERAL PARTNERSHIP TO FINANCE THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF COMMERCIAL FACILITIES LOCATED WITHIN THE CITY OF FORT WAYNE, INDIANA; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; AND DECLARING AN EMERGENCY.

**DEPARTMENT REQUESTING ORDINANCE:** Economic Development

**SYNOPSIS OF ORDINANCE:** This Ordinance enables amendment of the documents for a previously approved refunding (refinancing) of a 1984 Economic Development Revenue Bond issue reducing the interest rate to a maximum of 7.35%. rates.

**EFFECT OF PASSAGE:** 110 General Partnership will be enabled to secure updated financing at current market rates and the Mayor and the City Clerk will be authorized to execute all related documents.

**EFFECT OF NON-PASSAGE:** Refinancing will fail.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS):** None.

**ASSIGNED TO COMMITTEE (PRESIDENT):** \_\_\_\_\_



BILL NO. S-94-09-21

REPORT OF THE COMMITTEE ON  
FINANCE  
CLETUS R. EDMONDS - DONALD J. SCHMIDT - CO-CHAIR  
ARCHIE L. LUNSEY  
DAVID C. LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AUTHORIZING THE EXECUTION AND  
DELIVERY COMBINED FIRST AMENDMENT TO LOAN AGREEMENT TRUST INDENTURE, PROMISSORY  
NOTE AND MORTGAGE IN CONNECTION WITH THE REFINANCING ECONOMIC DEVELOPMENT  
REVENUE BONDS (THE 110 GENERAL PARTNERSHIP PROJECT) SERIES 1984A

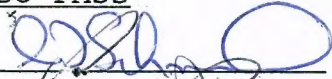
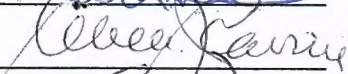


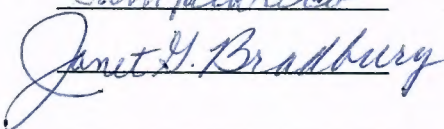
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

DATED: 10-11-94.

Sandra E. Kennedy  
City Clerk